

TITLE 8. PUBLIC EMPLOYMENT RELATIONS BOARD

NOTICE OF PROPOSED RULEMAKING

The Public Employment Relations Board (Board) proposes to adopt and amend the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

REGULATORY ACTION

The Board proposes to amend sections 32380, 32603, and 32604, and to add sections 32802 and 32804. Section 32380 identifies types of administrative decisions by Board agents that are not appealable to the Board itself. Section 32603 describes unfair practices by a public agency under the Meyers-Milias-Brown Act (MMBA). Section 32604 describes unfair practices by an employee organization under the MMBA. Proposed section 32802 provides for the filing of requests for factfinding with PERB under the MMBA, describes when a request may be filed and the requirements for filing, and provides that determinations as to sufficiency of a request are not appealable. Proposed section 32804 describes the timelines and procedures for the selection of a neutral chairperson of a factfinding panel pursuant to a sufficient request filed under proposed section 32802.

PUBLIC HEARING

The Board will hold a public hearing at 10:00 a.m., on June 14, 2012, in Room 103 of its headquarters building, located at 1031 18th Street, Sacramento, California. Room 103 is wheelchair accessible. At the hearing, any person may orally present statements or arguments relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing. Any person wishing to testify at the hearing is requested to notify the Office of the General Counsel as early as possible by calling (916) 322-3198 to permit the orderly scheduling of witnesses and to permit arrangements for an interpreter to be made if necessary.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes at

5:00 p.m. on June 12, 2012. Written comments will also be accepted at the public hearing. Submit written comments to:

Les Chisholm, Division Chief
Office of the General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95811
FAX: (916) 327-6377
E-mail: lechisholm@perb.ca.gov

AUTHORITY AND REFERENCE

Pursuant to Government Code section 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Educational Employment Relations Act (EERA). Pursuant to Government Code sections 3509(a) and 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Meyers-Milias-Brown Act (MMBA). Government Code section 3513(h) authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Ralph C. Dills Act (Dills Act). Government Code section 3563 authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Higher Education Employer-Employee Relations Act (HEERA). Pursuant to Public Utilities Code section 99561(f), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA). Pursuant to Government Code sections 3541.3(g) and 71639.1(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Governance and Employment Protection Act (Trial Court Act). Pursuant to Government Code sections 3541.3(g) and 71825(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act).

General reference for section 32380 of the Board's regulations: Government Code sections 3505.4, 3509, 3513(h), 3541.3(k) and (n), 3563(j) and (m), 71639.1 and 71825; and Public Utilities Code section 99561(j) and (m). General reference for section 32603 of the Board's regulations: Government Code sections 3502, 3502.1, 3505, 3505.2, 3505.3, 3505.4, 3505.5, 3505.7, 3506, 3506.5, 3507, 3507(d), 3507.1, 3507.5, 3508, 3508.1, 3508.5 and 3509; and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608. General reference for section 32604 of the Board's regulations: Government Code sections 3502, 3502.1, 3502.5, 3505, 3505.2, 3505.4, 3505.5, 3505.7, 3506, 3507 and 3509, Government Code; and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608. General reference for proposed section 32802 of the Board's regulations: Government Code sections 3505.4, 3505.5,

and 3505.7. General reference for proposed section 32804 of the Board's regulations: Government Code sections 3505.4, 3505.5, and 3505.7.

POLICY STATEMENT OVERVIEW

PERB is a quasi-judicial agency which oversees public sector collective bargaining in California. PERB presently administers seven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB are: the Meyers-Milius-Brown Act (MMBA) of 1968, which established collective bargaining for California's city, county, and local special district employers and employees; the Educational Employment Relations Act (EERA) of 1976 establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act), establishing collective bargaining for state government employees; the Higher Education Employer-Employee Relations Act (HEERA) of 1979 extending the same coverage to the California State University System, the University of California System and Hastings College of Law; the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) of 2003, which covers supervisory employees of the Los Angeles County Metropolitan Transportation Authority; and the Trial Court Employment Protection and Governance Act (Trial Court Act) of 2000 and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) of 2002, which together provide for collective bargaining rights for most trial court employees.

Prior to January 1, 2012, the MMBA did not provide for any mandatory impasse procedures, although allowing for voluntary mediation in section 3505.2 and authorizing local agencies to adopt additional dispute resolution procedures in section 3507. Pursuant to Assembly Bill 646 (Chapter 680, Statutes of 2011), the MMBA was amended to provide for a factfinding process that must be exhausted prior to a public agency's unilateral implementation of its last, best and final offer. Assembly Bill 646, while not changing the voluntary mediation provisions of section 3505.2, repealed the prior section 3505.4 and enacted new sections 3505.4, 3505.5, and 3505.7.

Under section 3505.4, in the absence of an agreement between a public agency and an exclusive representative, the employee organization may submit a request for factfinding to PERB. This section further describes PERB's responsibilities with respect to the selection or appointment of the neutral chairperson of the factfinding panel, and the timelines that are applicable to the process.

INFORMATIVE DIGEST

Section 32380 identifies administrative decisions that are not appealable. The proposed changes would, consistent with proposed section 32802, add a new paragraph identifying as non-appealable all determinations made with respect to the sufficiency of a factfinding request filed under section 32802. Section 32380 would also be revised to add MMBA section 3505.4 to the reference citations, and to make various non-substantive changes to other reference citations.

Section 32603 describes unfair practices by a public agency under MMBA. The current language includes a provision making it an unfair practice to fail to participate in good faith in any impasse procedures mutually agreed upon or required under the local rules of the public agency. The proposed changes would amend the language to also make it an unfair practice to fail to participate in impasse procedures required by the MMBA. Section 32603 would also be revised to add MMBA sections 3505.4, 3505.5, and 3505.7 to the reference citations, and to make various non-substantive changes to other reference citations.

Section 32604 describes unfair practices by an employee organization under MMBA. The current language includes a provision making it an unfair practice to fail to participate in good faith in any impasse procedures mutually agreed upon or required under the local rules of the public agency. The proposed changes would amend the language to also make it an unfair practice to fail to participate in impasse procedures required by the MMBA. Section 32604 would also be revised to add MMBA sections 3505.4, 3505.5, and 3505.7 to the reference citations, and to make various non-substantive changes to other reference citations.

Proposed section 32802 would describe when and in which office a request for factfinding may be filed with the Board. The new section would further describe the timeline for PERB's determination as to the sufficiency of the request, and would specify that such determinations are not appealable to the Board itself.

Proposed section 32804 would describe the process, in cases where the Board finds a factfinding request to be valid, for the selection or appointment of the neutral chairperson of a factfinding panel. The new section would further specify, consistent with the provisions of MMBA section 3505.5, that PERB will not be responsible in any case for the costs of the panel chairperson.

CONSISTENT AND COMPATIBLE WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, PERB has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

ANTICIPATED BENEFITS OF THE PROPOSED REGULATIONS

These regulations and changes will improve the public sector labor environment and the collective bargaining process by providing additional dispute resolution procedures and promoting full communication between public employers, their employees and representatives in resolving disputes over wages, hours and other terms and conditions of employment. These regulations further the policy of bilateral resolution of public sector labor disputes. During a time in which many public employers, employees, and employees' representatives must address severe financial shortfalls, these regulations benefit all parties by providing procedural certainty to reduce further financial hardships and promote bilateral resolution of conflicts without disrupting essential public services. As an additional benefit, these changes will help PERB's constituents to avoid unnecessary and costly unfair practices and related litigation. Additionally, when public sector labor disputes are resolved in less costly ways, the

community at-large benefits from those cost-savings. Finally, the proposed amendments clarify the definition of “unfair practices” under the MMBA.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: Initial determination of the agency is that the proposed action would not impose any new mandate.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17500 et seq: Initial determination of the agency is that the proposed action would not impose any new costs, and therefore requires no reimbursement.

Other non-discretionary cost or savings imposed upon local agencies: None

Costs or savings to state agencies: None

Cost or savings in federal funding to the state: None

Cost impact on representative private persons or businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: Initial determination of the agency is that the proposed action will have no impact.

Significant effect on housing costs: The agency’s initial determination is that there is no effect on housing costs.

The proposed regulations will not affect small business because they only affect public employers and public employees.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendments will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California. The adoption of the proposed amendment will benefit public employers, employees, employees’ representatives and the community at-large by further facilitating the resolution of public sector labor disputes by providing additional dispute resolution procedures and promoting full and bilateral communication between PERB’s constituents. In so doing, California residents’ welfare will receive the benefit of stable collective bargaining and dispute resolution, which translates to continuous delivery of the essential services that these employers and employees provide to California communities.

CONSIDERATION OF ALTERNATIVES

A rulemaking agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

PRELIMINARY ACTIVITIES

PERB staff began meeting with interested parties about the statutory changes made by Assembly Bill 646 in October 2011; circulated discussion drafts of possible regulations; held open meetings to take comments and suggestions on November 8, 2011 (Oakland) and November 10, 2011 (Glendale); and posted copies of the discussion drafts, written comments from parties, and the staff recommendations on the Board's web site. Additional public comments were received at the December 8, 2011 public Board meeting, at which time the Board authorized submission of an emergency rulemaking package to implement the provisions of Assembly Bill 646. The Board has also relied upon the Economic Impact Assessment identified in this Notice in proposing regulatory action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office, at the address below. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies of these documents and the Final Statement of Reasons, when available, may be obtained by contacting Jonathan Levy or Katherine Nyman at the address or phone number listed below, and are also available on the Board's web site (see address below).

ADOPTION OF PROPOSED REGULATIONS, AVAILABILITY OF CHANGED OR MODIFIED TEXT AND FINAL STATEMENT OF REASONS

Following the hearing, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text -- with changes clearly indicated -- shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Jonathan Levy or Katherine Nyman at the address

indicated below. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INTERNET ACCESS

The Board will maintain copies of this Notice, the Initial Statement of Reasons and the text of the proposed regulations on its web site, found at www.perb.ca.gov, throughout the rulemaking process. Written comments received during the written comment period will also be posted on the web site. The Final Statement of Reasons or, if applicable, notice of a decision not to proceed will be posted on the web site following the Board's action.

CONTACT PERSONS

Any questions or suggestions regarding the proposed action or the substance of the proposed regulations should be directed to:

Jonathan Levy, Regional Attorney
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1031 18th Street
Sacramento, CA 95811
(916) 327-8387

or

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